

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

In Re:	§	
	§	
FIRE UP, INC.	§	Case No. 14-10447
	§	(Chapter 11)
Debtor. <sup>1</sup>	§	
	§	

**APPLICATION FOR ORDER AUTHORIZING AND APPROVING POST-PETITION  
FINANCING WITH INDEPENDENT BANK**

**Debtor has requested that an interim hearing be conducted on this matter on September 4, 2014 at 1:30 pm in Courtroom No. 1, 903 San Jacinto, Austin, TX 78701. If the expedited hearing is granted, you will receive a separate notice.**

TO THE HONORABLE JUDGE OF SAID COURT:

**Fired Up, Inc.** (“Debtor”), Debtor in the above-styled and referenced case, hereby files this Application for Order Authorizing and Approving Post-Petition Financing with Independent Bank which will finance the Debtor’s acquisition of a new point of sale system. In support thereof, Debtor respectfully states the following:

**Jurisdiction**

- 1 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(D).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The basis for the relief requested herein is primarily ground in 11 U.S.C. §§ 105(a) and 364 as supplemented and amplified by Fed. R. Bankr. P. 4001(c).

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<sup>1</sup> Until February 26, 2014, Debtor’s business was being operated partially by the Debtor, partially by Kona Restaurant Group, Inc. (“KRG”), a Delaware corporation wholly owned by the Debtor, and partially by Carino’s Italian Kitchen, Inc. (“CIK”), a Delaware corporation wholly owned by KRG. CIK was merged into KRG in Delaware and KRG was merged in to the Debtor, a Texas corporation, in Texas.

### **Background**

4. On March 27, 2014 (“Petition Date”), Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Texas, Austin Division (“Court”), thereby commencing this chapter 11 case (“Case”). Debtor continues in possession of its property and is operating and managing its business as Debtor-in-Possession pursuant to the provisions of 11 U.S.C. §§ 1107(a) and 1108.

5. No trustee or examiner has been appointed in the Case.

6. The United States Trustee appointed an Official Committee of Unsecured Creditors on April 7, 2014.

6. The Debtor is engaged in the business of owning, operating and franchising the Johnny Carino’s chain of casual dining restaurants.

7. The Debtor requires new Point of Sale (POS) software in order to meet industry standards (known as Payment Card Industry or PCI standards), to bring its operating systems up to date and provide security to its customers. The Debtor has selected the North Star Order Entry (NSOE) system which uses sophisticated point to point (P2P) encryption methods to protect credit card data. This system will allow the Debtor to certify its compliance to the PCI compliance council. Furthermore, Debtor has received notice from Discover and American Express requesting that the Debtor become PCI compliant or risk losing the ability to accept those cards. The cost of the new system will be \$450,000. The Debtor intends to implement the system in phases. The initial phase to be commenced in September 2014 will cost approximately \$150,000.

8. The Debtor has elected to finance the purchase of the point of sale system in the exercise of its business judgment because it was able to obtain advantageous financing terms from Independent Bank and because the financing transaction will allow the Debtor to conserve its cash in the months leading up to approval of a plan of reorganization.

9. The Debtor has two pre-petition debts with Independent Bank.

a. A secured debt in the amount of \$603,252.58 secured by the assets of the Debtor's Pearland location; and

b. An unsecured debt in the amount of \$621,913.87 resulting from a loan with regard to a former leased location.

Independent Bank was originally appointed to the Official Committee of Unsecured Creditors but subsequently resigned.

10. The terms of the proposed financing are as follows:

a. Debtor requests permission to borrow \$150,000 following an interim hearing to begin implementation of its POS system and up to \$300,000 in additional funds upon final approval of the Motion.

b. The debt will be secured by a Certificate of Deposit posted by two of the Debtor's shareholders, Creed and Lynn Ford.

c. The debt will be payable in sixty equal monthly installments at an interest rate of 3.5%.

d. The new loan will not be cross-collateralized with any pre-petition debt. Debtor will provide a commitment letter from Independent Bank by the interim hearing on the Motion.

**Relief Requested**

12. Debtor seeks permission to enter into the proposed post-petition financing with Independent Bank pursuant to 11 U.S.C. §364.

13. Debtor requests that the Court schedule an interim hearing on expedited notice and schedule a final hearing.

WHEREFORE, PREMISES CONSIDERED, Debtor prays that the Court allow it to enter into the proposed post-petition financing with Independent Bank and for such further and additional relief to which it may be entitled.

Respectfully Submitted,

BARRON & NEWBURGER, P.C.

/s/Stephen W. Sather  
Barbara Barron (SBN 01817300)  
Stephen W. Sather (SBN 17657520)  
1212 Guadalupe St Ste 104  
Austin, Texas 78701-1837  
Telephone: (512) 476-9103  
Facsimile: (512) 476-9253

**CERTIFICATE OF SERVICE**

I certify that the foregoing was served by electronic mail on August \_\_, 2014, to all parties listed on the Tenth Master Limited Service List attached hereto and made a part hereof and electronically by the Court's ECF system to all parties registered to receive such service.

/s/ Stephen W. Sather

**United States Trustee:**

Henry G. Hobbs  
Deborah A. Bynum  
Office of the U.S. Trustee  
903 San Jacinto Blvd., Room 230  
Austin, TX 78701  
[henry.g.hobbs@usdoj.gov](mailto:henry.g.hobbs@usdoj.gov)  
[deborah.a.bynum@usdoj.gov](mailto:deborah.a.bynum@usdoj.gov)

**Debtor:**

Creed Ford, III  
President/CEO  
Ford Restaurant Group  
1514 RR 620 South  
Austin, TX 78734  
[cford@carinos.com](mailto:cford@carinos.com)

Margaret B. Smith, CPA  
Director of Finance  
Ford Restaurant Group  
1514 RR 620 South  
Austin, TX 78734  
[msmith@fordrestgrp.com](mailto:msmith@fordrestgrp.com)

**Proposed Attorneys for Debtor:**

Barbara M. Barron  
Stephen W. Sather  
Barron & Newburger, P.C.  
1212 Guadalupe Street, Suite 104  
Austin, TX 78701  
[bbarron@bn-lawyers.com](mailto:bbarron@bn-lawyers.com)  
[ssather@bn-lawyers.com](mailto:ssather@bn-lawyers.com)

John Vernon  
The Vernon Law Group, PLLC  
4925 Greenville Avenue, Suite 200  
Dallas, TX 75206  
[jvernon@vernonlawgroup.com](mailto:jvernon@vernonlawgroup.com)

Kareem Hajjar  
Hajjar Sutherland Peters, LLP  
3144 Bee Caves Road  
Austin, TX 78746  
[khajjar@legalstrategy.com](mailto:khajjar@legalstrategy.com)

**20 Largest Unsecured Creditors:**

AEI Accredited Investor Fund 2002  
Attn: Brian Schulz  
1300 Wells Fargo Place  
30 East Seventh Street  
St. Paul, MN 55101  
[bschulz@aeifunds.com](mailto:bschulz@aeifunds.com)

AEI Fund Management, Inc.  
Attn: Brian Schulz  
1300 Wells Fargo Place  
30 East Seventh Street  
St. Paul, MN 55101  
[bschulz@aeifunds.com](mailto:bschulz@aeifunds.com)

ARC CAFÉ, LLC  
American Realty Capital  
Attn: Cindy Dip  
200 Dryden Road, Suite 1100  
Dresher, PA 19025  
[cdip@arlcapi.com](mailto:cdip@arlcapi.com)

Cassidy Turley Midwest, Inc.  
Attn: Brian Schulz  
1300 Wells Fargo Place  
30 East Seventh Street  
St. Paul, MN 55101  
[bschulz@aeifunds.com](mailto:bschulz@aeifunds.com)

Food Services of America  
Attn: Lee Clark  
P.O. Box 839  
Meridian, ID 83680  
[lee\\_clark@fsafood.com](mailto:lee_clark@fsafood.com)  
[boise\\_ar@fsafood.com](mailto:boise_ar@fsafood.com)

GE Capital Franchise Finance Corp.  
c/o Jeffrey T. Wegner  
Kutak Rock, LLP  
1650 Farnam Street  
Omaha, NE 68102-2186  
[jeffrey.wegner@kutakrock.com](mailto:jeffrey.wegner@kutakrock.com)

Gentilis, Inc.  
Attn: Moja Lindsey  
3400 Reeves Canyon Road  
Redwood Valley, CA 95470  
[moja2@thelindseycompanies.com](mailto:moja2@thelindseycompanies.com)

Internal Revenue Service  
Special Procedures Staff- Insolvency  
P.O. Box 7346  
Philadelphia, PA 19101-7346

Magdalena Properties, LLC  
c/o R. Spencer Shytles  
Graham Bright & Smith, P.C.  
5420 LBJ Freeway, Suite 300  
Dallas, TX 75240  
[rss@gbstxlaw.com](mailto:rss@gbstxlaw.com)

Pleasant Ridge Development Co.  
Attn: Lou Schickel  
11601 Pleasant Ridge Rd., Suite 300  
Little Rock, AR 72212  
[lou@schickels.com](mailto:lou@schickels.com)  
[invoices@schickels.com](mailto:invoices@schickels.com)

Mary Raney & Dick P. Wood, Jr., as  
Trustees of RC Nelms Jr. Hillcrest Trst  
c/o James H. Billingsley  
Polsinelli, PC  
2501 N. Harwood St., Suite 1900  
Dallas, TX 75201  
[jbillingsley@polsinelli.com](mailto:jbillingsley@polsinelli.com)

Shamrock Foods-Consolidated  
Attn: Jessica Harlow  
Department 219  
Denver, CO 80291-0219  
[jessica\\_harlow@shamrockfoods.com](mailto:jessica_harlow@shamrockfoods.com)

Texas Comptroller of Public Accts.  
c/o Jason A. Starks  
Assistant Attorney General  
Bankruptcy & Collections Division  
P.O. Box 12548  
Austin, TX 78711-2548  
[jason.starks@texasattorneygeneral.gov](mailto:jason.starks@texasattorneygeneral.gov)

Texas Workforce Commission  
Attn: Regulatory Integrity Div-SAU  
101 E. 15th Street, Room 556  
Austin, TX 78778-0001  
[rid.taxbankruptcy@twc.state.tx.us](mailto:rid.taxbankruptcy@twc.state.tx.us)

**Secured Creditors:**

FRG Capital, LLC  
c/o Blake Rasner  
Haley & Olson, P.C.  
510 N. Valley Mills Drive, Suite 600  
Waco, TX 76710  
[brasner@haleyolson.com](mailto:brasner@haleyolson.com)

The Coca-Cola Company  
William Kay, Sr. Bankruptcy Advisor  
P.O. Box 1734  
NAT 2008 Mail Stop  
Atlanta, GA 30313  
[billkaye@jllconsultants.com](mailto:billkaye@jllconsultants.com)

Wells Fargo Bank, N.A.  
c/o James G. Ruiz  
Winstead, P.C.  
401 Congress Avenue, Suite 2100  
Austin, TX 78701  
[jruiz@winstead.com](mailto:jruiz@winstead.com)

Prosperity Bank  
c/o Lisa C. Fancher  
Fritz, Byrne, Head & Harrison, PLLC  
98 San Jacinto Blvd., Suite 2000  
Austin, TX 78701-4286  
[lfancher@fbhh.com](mailto:lfancher@fbhh.com)

Wilmington Center, LLC  
Attn: Fay Farzani  
9471 Lomitas Avenue  
Beverly Hills, CA 90210  
[fafar101@aol.com](mailto:fafar101@aol.com)

**Additional Notice:**

Bruce M. Wilpon  
Special Assistant U.S. Attorney  
Internal Revenue Service  
300 E. 8<sup>th</sup> Street, Suite 601  
Austin, TX 78701  
[bruce.m.wilpon@irs.counsel.treas.gov](mailto:bruce.m.wilpon@irs.counsel.treas.gov)

**Unsecured Creditors Committee:**

AEI Income & Growth Fund 24, LLC  
Robert P. Johnson  
30 Seventh Street East, Suite 1300  
St. Paul, MN 55101  
[bschulz@aeifunds.com](mailto:bschulz@aeifunds.com)

**Proposed Counsel for Creditors' Committee:**

Bradford J. Sandler  
Pachulski, Stang, Ziehl & Jones, LLP  
919 North Market St., 17<sup>th</sup> Floor  
Wilmington, DE 19801  
[bsandler@pszjlaw.com](mailto:bsandler@pszjlaw.com)

Jason P. Wylie  
The Law Office of Jason Wylie  
8553 N. Beach St., PMB 316  
Fort Worth, TX 76244-4919  
[jason@jasonwylie.com](mailto:jason@jasonwylie.com)

Ben E. Keith Company (interim chair)  
Richard Grasso  
P. O. Box 2628  
Ft. Worth, TX 76112  
[rngrosso@benekeith.com](mailto:rngrasso@benekeith.com)

**Miscellaneous:**

Brownsville Public Utilities Board  
c/o Gilbert L. Hamberg, Esq.  
1038 Darby Drive  
Yardley, PA 19067  
[ghamberg\\_3@msn.com](mailto:ghamberg_3@msn.com)

John M. Koneck  
Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402-1425  
[jkoneck@fredlaw.com](mailto:jkoneck@fredlaw.com)

Glazier Foods Company  
Art Innis  
11303 Antoine Dr.  
Houston, TX 77066  
[artinnis@glazierfoods.com](mailto:artinnis@glazierfoods.com)

CASS  
Attn: Frank Garcia  
2675 Corporate Exchange Drive  
Columbus, OH 43231  
[fgarcia@cassinfo.com](mailto:fgarcia@cassinfo.com)

Mackenzie S. Wallace  
Thompson & Knight, LLP  
1722 Routh Street, Suite 1500  
Dallas, TX 75201  
[mackenzie.wallace@tklaw.com](mailto:mackenzie.wallace@tklaw.com)

Independent Bank  
Charley Rigney  
8004 Woodway Dr., Suite 200  
Waco, TX 76712  
[crigney@ibt.com](mailto:crigney@ibt.com)

Fintech  
Attn: Mandi Aiton  
7702 Woodland Center Blvd., #50  
Tampa, FL 33614  
[maiton@fintech.com](mailto:maiton@fintech.com)

Timothy E. Hudson  
Thompson & Knight, LLP  
1722 Routh Street, Suite 1500  
Dallas, TX 75201  
[tim.hudson@tklaw.com](mailto:tim.hudson@tklaw.com)

National Retail Properties, Inc.  
David G. Byrnes, Jr.  
450 S. Orange Avenue, Suite 900  
Orlando, FL 32801  
[david.byrnes@nnreit.com](mailto:david.byrnes@nnreit.com)

Summit Energy  
Attn: Tim Ward  
103 Historic Town Square  
Lancaster, TX 75146  
[tim.ward@ems.schneider-electric.com](mailto:tim.ward@ems.schneider-electric.com)

William M. Kane  
Traylor, Tompkins & Black, P.C.  
751 Horizon Court, Suite 200  
Grand Junction, CO 81506-8754  
[wmk@grandjunctionlaw.com](mailto:wmk@grandjunctionlaw.com)

**Notices of Appearance:**

Arlington ISD, Mansfield ISD  
c/o Elizabeth Banda Calvo  
Perdue, Brandon, Fielder, et al  
P.O. Box 13430  
Arlington, TX 76094-0430  
[ebcalvo@pbfc.com](mailto:ebcalvo@pbfc.com)

Atascocita 1692, LLC  
c/o Crystal R. Axelrod  
Morgan, Lewis & Bockius, LLP  
1000 Louisiana Street, Suite 4000  
Houston, TX 77002  
[caxelrod@morganlewis.com](mailto:caxelrod@morganlewis.com)

Atascocita 1692, LLC  
c/o Patrick D. Fleming  
Morgan, Lewis & Bockius, LLP  
101 Park Avenue  
New York, NY 10178  
[pfleming@morganlewis.com](mailto:pfleming@morganlewis.com)

Bexar County  
c/o David G. Aelvoet  
Linebarger Goggan Blair & Sampson  
711 Navarro Street, Suite 300  
San Antonio, TX 78205  
[sanantonio.bankruptcy@publicans.com](mailto:sanantonio.bankruptcy@publicans.com)

Inland American Retail Mgmt., LLC  
c/o Kevin M. Newman, Esq.  
Menter, Rudin & Trivelpiece, P.C.  
308 Maltbie Street, Suite 200  
Syracuse, NY 13204-1498  
[knewman@menterlaw.com](mailto:knewman@menterlaw.com)

National Retail Properties, LP  
c/o David M. Bennett  
and Cassandra Ann Sepanik  
Thompson & Knight, LLP  
1722 Routh Street, Suite 1500  
Dallas, TX 75201  
[david.bennett@tklaw.com](mailto:david.bennett@tklaw.com)  
[cassandra.sepanik@tklaw.com](mailto:cassandra.sepanik@tklaw.com)

Texas Ad Valorem Taxing Entities  
c/o Lee Gordon  
McCreary, Veselka, Bragg & Allen  
P.O. Box 1269  
Round Rock, TX 78680  
[lgordon@mvalaw.com](mailto:lgordon@mvalaw.com)

Texas Ad Valorem Taxing Entities  
c/o Diane W. Sanders  
Linebarger Goggan Blair & Sampson  
P.O. Box 17428  
Austin, TX 78760-7428  
[austin.bankruptcy@publicans.com](mailto:austin.bankruptcy@publicans.com)

Texas Ad Valorem Taxing Entities  
c/o Elizabeth Weller  
Linebarger Goggan Blair & Sampson  
2777 N. Stemmons Frwy, Suite 1000  
Dallas, TX 75207  
[dallas.bankruptcy@publicans.com](mailto:dallas.bankruptcy@publicans.com)

RioCan America Management, Inc.  
c/o R. Spencer Shytles  
Graham Bright & Smith, P.C.  
5420 LBJ Freeway, Suite 300  
Dallas, TX 75240  
[rss@gbstxlaw.com](mailto:rss@gbstxlaw.com)

Tyler Independent School District  
c/o Tab Beall  
Perdue, Brandon, Fielder, et al  
P.O. Box 2007  
Tyler, TX 75710-2007  
[tbeall@pbfc.com](mailto:tbeall@pbfc.com)  
[tylbkc@pbfc.com](mailto:tylbkc@pbfc.com)

Texas Ad Valorem Taxing Entities  
c/o Owen M. Sonik  
Perdue, Brandon, Fielder, et al  
1235 North Loop West, Suite 600  
Houston, TX 77008  
[houbank@pbfc.com](mailto:houbank@pbfc.com)

Hidalgo County & McAllen ISD  
c/o John T. Banks  
Perdue, Brandon, Fielder, et al  
3301 Northland Drive, Suite 505  
Austin, TX 78731  
[jbanks@pbfc.com](mailto:jbanks@pbfc.com)

Lubbock Central Appraisal District  
c/o Laura J. Monroe  
Perdue, Brandon, Fielder, et al  
P.O. Box 817  
Lubbock, TX 79408  
[lmonroe@pbfc.com](mailto:lmonroe@pbfc.com)

Texas Ad Valorem Taxing Entities  
c/o John P. Dillman  
Linebarger Goggan Blair & Sampson  
P.O. Box 3064  
Houston, TX 77253-3064  
[houston\\_bankruptcy@publicans.com](mailto:houston_bankruptcy@publicans.com)

GS II Meridian Crossroads, LLC  
c/o Renee B. Weiss, Esq.  
DDR Corp.  
P.O. Box 228042  
Beachwood, OH 44122  
[rweiss@ddr.com](mailto:rweiss@ddr.com)

ARC CAFÉ, LLC  
c/o R. Brandon Bundren  
Duane Morris, LLP  
1330 Post Oak Blvd., Suite 800  
Houston, TX 77056-3166  
[rbbundren@duanemorris.com](mailto:rbbundren@duanemorris.com)

ARC CAFE, LLC  
c/o William C. Heuer  
and Patricia H. Heer  
Duane Morris, LLP  
1540 Broadway  
New York, NY 10036  
[whueuer@duanemorris.com](mailto:whueuer@duanemorris.com)  
[phheer@duanemorris.com](mailto:phheer@duanemorris.com)

Missouri Department of Revenue  
Bankruptcy Unit  
Attn: S. Christopher Conway  
P.O. Box 475  
Jefferson City, MO 65105-0475  
[txwdecf@dor.mo.gov](mailto:txwdecf@dor.mo.gov)

RB River IV, LLC, et al  
c/o Jeffrey Ackermann  
Durio, McGoffin, Stagg & Ackermann  
P.O. Box 51308  
Lafayette, LA 70505-1308  
[jeffackermann@dmsfirm.com](mailto:jeffackermann@dmsfirm.com)

City of Fort Worth  
c/o Christopher B. Mosley  
Senior Assistant City Attorney  
1000 Throckmorton Street  
Fort Worth, TX 76102  
[chris.mosley@fortworthtexas.gov](mailto:chris.mosley@fortworthtexas.gov)

The City of Laredo  
c/o Christina Flores  
Flores & Saucedo, PLLC  
5517 McPherson, Suite 14  
Laredo, TX 78041  
[cfloreslaw@sbcglobal.net](mailto:cfloreslaw@sbcglobal.net)  
[floressaucedopllc@gmail.com](mailto:floressaucedopllc@gmail.com)

Megaplex Four, Inc.  
c/o Paul M. Hoffmann  
Stinson Leonard Street, LLP  
1201 Walnut St., Suite 2900  
Kansas City, MO 64106  
[paul.hoffmann@stinsonleonard.com](mailto:paul.hoffmann@stinsonleonard.com)

Travis County  
c/o Kay D. Brock  
Assistant Travis County Attorney  
P.O. Box 1748  
Austin, TX 78767  
[kay.brock@co.travis.tx.us](mailto:kay.brock@co.travis.tx.us)

Ecolab, Inc.  
c/o Kohner, Mann & Kailas, S.C.  
Attn: Samuel C. Wisotzkey  
4650 N. Port Washington Rd.  
Milwaukee, WI 53212-1059  
[swisotzkey@kmksc.com](mailto:swisotzkey@kmksc.com)

Independent Bank  
c/o Steve Turner  
Barrett Daffin Frappier Turner, et al  
15000 Surveyor Blvd., Suite 100  
Addison, TX 75001  
[wdecf@bdfgroup.com](mailto:wdecf@bdfgroup.com)

DDR Corp.  
c/o Robert L. LeHane, Esq.  
and Jennifer D. Raviele, Esq.  
Kelley Drye & Warren, LLP  
101 Park Avenue  
New York, NY 10178  
[KDWBankruptcyDepartment@kelleydrye.com](mailto:KDWBankruptcyDepartment@kelleydrye.com)  
[rlehane@kelleydrye.com](mailto:rlehane@kelleydrye.com)  
[jraviele@kelleydrye.com](mailto:jraviele@kelleydrye.com)

Hill Country Texas Galleria, LLC  
c/o Joseph D. Martinec  
Martinec, Winn, Vickers & McElroy, PC  
919 Congress Avenue, Suite 200  
Austin, TX 78701  
[martinec@mwvmlaw.com](mailto:martinec@mwvmlaw.com)

South Coast Plaza, LLC  
c/o Joseph D. Martinec  
Martinec, Winn, Vickers &  
McElroy, PC  
919 Congress Avenue, Suite 200  
Austin, TX 78701  
[martinec@mwvmlaw.com](mailto:martinec@mwvmlaw.com)

South Dakota Department of  
Revenue & Regulation  
Attn: Carol Van Roekel  
445 East Capitol Avenue  
Pierre, SD 57501-3185  
[carol.vanroekel@state.sd.us](mailto:carol.vanroekel@state.sd.us)

The Laredo Community College  
c/o George R. Meurer  
Kazen, Meurer & Perez  
P.O. Box 6237  
Laredo, TX 78042-6237  
[grmeurer@kmp-law.com](mailto:grmeurer@kmp-law.com)

GE Capital (GEFF and GEBAF)  
c/o Lynn H. Butler  
Husch Blackwell, LLP  
111 Congress Avenue, Suite 1400  
Austin, TX 78701  
[lynn.butler@huschblackwell.com](mailto:lynn.butler@huschblackwell.com)

Lewisville ISD  
c/o George C. Scherer, Esq.  
Law Offices of Robert E. Luna, P.C.  
4411 N. Central Expressway  
Dallas, TX 75205  
[scherer@txschoollaw.com](mailto:scherer@txschoollaw.com)